

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

Defendant(s).

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Criminal Case No.:
(RBW)

GENERAL ORDER GOVERNING CRIMINAL CASES
(JUDGE WALTON)

All courtroom proceedings, unless otherwise indicated, will be conducted in courtroom 5 of the E. Barrett Prettyman United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C. 20001.

Judge Walton's permanent staff consist of Ms. Auntalene E. Queen, Secretary/Judicial Assistant (202) 354-3290; Ms. Phyllis Brown, Courtroom Deputy Clerk (202) 354-3142; and Ms. Phyllis Merana, Court Reporter (202) 273-0889. One of Judge Walton's two law clerks will be assigned to this case, and the name of the assigned law clerk can be obtained from Ms. Queen.

To facilitate the expeditious, efficient and fair resolution of this matter, it is **ORDERED** that counsel comply with the following directives:

(1) **COMMUNICATIONS WITH THE COURT:**

Counsel should endeavor to keep communications with chambers to a **minimum**. Counsel are advised that chambers staff **may not** provide legal advice of any kind. *Ex parte* communications on matters other than scheduling matters are prohibited. Communications with the court concerning scheduling matters should be

directed to the Courtroom Deputy Clerk. If counsel absolutely needs to contact chambers, it should be done through a telephone conference with the law clerk who is assigned to this case.

(2) **PUNCTUALITY:**

Counsel is expected to be punctual for all court proceedings. Defense Counsel will also advise the defendant, if he/she is on pretrial release, of his/her obligation to appear in court in a timely manner, and government and defense counsel shall advise their witnesses of their obligation to be punctual at proceedings they are required to attend.

(3) **CIVILITY:**

Counsel are expected to treat each other and those involved in the case with dignity, respect and civility, both in court and in out-of-court conferences, meetings and discovery proceedings. Counsel are expected to advise their client and witnesses of this mandate of the court.

(4) **MOTIONS FOR EXTENSION OF TIME:**¹

The court expects parties to work within the time frames designated by the court's orders. Parties should not expect the court to grant extensions, absent a showing of good cause. Absent a last minute emergency that necessitate the need for an extension, any motions for an extension of time shall be filed at least **four** business days prior to the deadline the motion is seeking to extend. All motions for an extension, regardless of when it is filed, **must** include the following (otherwise they will not be

¹ The court will not entertain stipulations concerning extensions of time. Parties must file a motion when seeking an extension.

considered by the court):

- (a) how many, if any, previous extensions of time the court has granted to each party;
- (b) the specific grounds for the motion;
- (c) a statement about the effect the court's granting the motion will have on all other previously scheduled deadlines;
- (d) the period of time the extension is requesting; and,
- (e) the moving party shall include a statement of opposing counsel's position regarding the motion.

(5) **GUILTY PLEA HEARINGS:**

At least two days in advance of the hearing, counsel shall submit to the court the following documents:

- (a) the written plea agreement or an outline of the agreement if it has not been reduced to writing;
- (b) the elements for each offense to which a guilty plea will be entered;
- (c) the factual proffer the defendant is prepared to acknowledge;
- (d) a statement of all potential penalty consequences of the plea; and
- (e) any superseding indictment or new information, if applicable.

(6) **DISCOVERY MOTIONS:**

The court requires counsel to confer and attempt to resolve all discovery disputes informally. If counsel must file a motion pertaining to a discovery matter, the motion **must** comply with **Local Criminal Rule 16.1**.

(7) **TRIAL PROCEDURES:**

The sole reason for the following directive is to ensure that trials tried before this court are conducted in a fair, efficient and dignified manner. They are not designed to bring about a rigidly formalized trial process. The court will attempt, with the full cooperation of counsel, to conduct trials in a fashion that achieves the above objections in a congenial environment.

(a) **TRIAL SCHEDULE:** The jury portion of the trial will be conducted each trial day from approximately 9:30 a.m. to approximately 12:30 p.m. and from 1:45 p.m. to approximately 5:00 p.m. on Mondays through Thursdays, unless counsel are notified otherwise. The trial will convene promptly at the designated times on each trial day. Counsel shall be available in the courtroom **at least five minutes before court is scheduled to begin or resume.**

(b) **GENERAL COURTROOM RULES:** The court expects counsel to **exercise civility at all times towards everyone related to the case or working with the court.**

1. Counsel shall remain at the lectern when addressing the jury or when interrogating a witness, unless counsel uses either the handheld or the lapel microphone. The handheld and the lapel microphone shall never be removed from the courtroom.
2. Counsel shall obtain permission from the court before approaching an adverse or hostile witness if, for example, counsel desires to show a witness a document.

3. Counsel are reminded that the court will enforce the traditional rules regarding opening statements and closing arguments, e.g., no personal opinions, no personal attacks on opposing counsel.
4. All objections or other statements by counsel shall be made while standing.
5. All statements by counsel must be directed to the court and not to opposing counsel, unless permission is obtained from the court to address other counsel.
6. Counsel are reminded to secure leave from the court before posing questions or engaging in procedures, in the presence of the jury, that carry a risk of undue prejudice, or that by law or customary procedures require judicial pre-approval.
7. During the interrogation of witnesses, counsel shall refer to all witnesses under interrogation, including his or her clients, as "Mr." or "Ms." The use of first names or nicknames is prohibited.

(c) **NEW ISSUES NEEDING COURT RULINGS:** Each party must notify the court and the other parties in writing by 7:00 a.m. each day of any issues that the party will ask the court to resolve before or during that day of trial. The parties must send such notice to the court and other counsel by facsimile, email² or by hand delivery. Judge Walton's facsimile number is

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All submissions made to Judge Walton's chamber's by email shall be addressed to auntalene_queen@dcd.uscourts.gov, unless otherwise directed by the court.

(202) 354-3292. The opposing party or parties must submit their response, if any, by 8:00 a.m. to the court and to all parties. Such response will be submitted by facsimile, email or hand-delivery as indicated above. The parties are encouraged to submit these objections and responses on the evening preceding the next trial day whenever possible.

- (d) **OBJECTIVES AT TRIAL:** Counsel who lodge objections before a jury must state merely the legal basis for their objections , i.e., hearsay; relevancy, etc., without elaboration or argument, and the court shall rule on the objection without additional discussion whenever possible. Bench conferences are discouraged. For purposes of "protecting the record" for appellate review, counsel may explain or amplify their objections, on the record, after the jury has been excused for a break, lunch or at the end of the day. However, counsel may request an immediate bench conference if counsel believes it is absolutely necessary to do so to avoid an injustice or reversible error.
- (e) **WAIVER OF DEFENDANT'S PRESENCE AT BENCH CONFERENCES:**
Unless the defendant desires to be present for bench conferences, defense counsel shall secure a written waiver from the defendant of his/her right to be present at bench conferences during trial and file the same with the court by 9:00 a.m. on the morning of trial.
- (f) **VOIR DIRE:** The court's voir dire and jury selection practices are attached to this Order as addendum one.

- (g) **EXHIBIT LISTS**: Unless otherwise indicated by the court, all government exhibits are to be marked numerically in advance of trial and the written list of the exhibits along with a brief description of each exhibit must be submitted to the court and defense counsel at least 3 days before the trial commences. Defense counsel shall follow the same procedure and must make his/her written list of exhibits available to the prosecutor and the court at the beginning of the defense case.
- (h) **JENKS ACT**: Government counsel is encouraged to disclose Jencks Act statements to defense counsel sufficiently in advance of a witness' direct examination so as to give defense counsel the opportunity to review it and avoid the necessity of a recess after the completion of the witness' direct testimony.
- (i) **TECHNICAL EQUIPMENT**: Counsel who wish to use technical equipment during the trial to present exhibits (e.g., x-ray view boxes, video display monitors, overhead projectors, etc.) must make their own arrangements for the presence and operation of the equipment. Questions concerning the use of technical equipment should be directed to the Court's Deputy Courtroom Clerk.
- (j) **RULE ON WITNESSES**: Except for the parties or their representatives, all witnesses shall remain outside the courtroom except while testifying. Counsel shall instruct witnesses not to discuss their testimony after they leave the witness stand, both during and after the completion of their testimony. Except for a criminal defendant-witness (because of Sixth

Amendment implications), counsel calling a witness to testify shall have no further discussions with that witness concerning any aspect of the testimony already given or anticipated after the witness has been tendered for cross examination and until such time as the witness has been tendered back for redirect examination. Persons who are assisting or associated with the attorney who calls a witness (*e.g.*, law enforcement officers and defense investigators) will also abide by these constraints. Regarding defendants who decide to testify, counsel are directed to the District of Columbia Circuit's opinion in *United States v. McLaughlin*, 164 F.3d 1, 4-7 (D.C. Cir. 1998), *cert. denied*, 119 S. Ct. 1485 (1999).

- (k) **PLACING WITNESSES ON CALL:** Once the trial begins, witnesses shall be put on call at the peril of the calling party. The trial will not be recessed because a witness who is on call is unavailable, except in extraordinary circumstances. The court will endeavor to accommodate witnesses with special problems, *e.g.*, employment and child care, and out-of-town and expert witnesses, if counsel alerts the court ahead of time of the situation. The party calling a witness shall arrange for that witness' presence until cross-examination is completed. The failure to have a witness present for cross-examination following direct examination is grounds to strike the witness' testimony.

- (l) **PRESENCE OF COUNSEL:** Once court is in session, lead counsel shall not leave the courtroom without the court's express permission.

- (m) **SUA SPONTE JURY INSTRUCTIONS:** The necessity for a sua sponte jury instruction shall be raised by the party seeking the instruction at the earliest possible time. Failure to do so may be deemed to constitute a waiver of any such request. In the event the instruction is given, it shall be counsel's responsibility to remind the court of the necessity for inclusion of the sua sponte instruction in its final charge. Counsel shall do so by 4:00 p.m. of the evening prior to the day the jury is to receive the final charge from the court.
- (n) **VERBAL OR FACIAL CONTACT WITH THE JURY:** Counsel (government and defense) and the defendant shall remain seated when the jury is entering or leaving the courtroom, and shall not make any verbal, facial or other contact with the jury that would be interpreted as conveying a comment related to the circumstances or developments of the trial.
- (o) **DIRECT AND CROSS-EXAMINATION:** On direct or cross-examination of a witness, counsel shall not:
1. in effect personally present testimony by improperly incorporating facts into their questions so as to put before the jury information that has not been received into evidence;
 2. use an objection as an opportunity to argue or make a speech in the presence of the jury; or
 3. show the jury a document or anything else that has not yet been

received into evidence without leave of the court.

(p) **COUNSEL WILL NOT BE AFFORDED RE-CROSS EXAMINATION, ABSENT EXTRAORDINARY CIRCUMSTANCES.**

(q) **CLOSING ARGUMENTS:** In making closing arguments, counsel shall be limited by the evidence presented during trial and are reminded of the prohibition against appealing to the jurors' prejudices. Moreover, during closing arguments and throughout the trial, counsel **SHALL NOT**.³

1. comment adversely on the failure of any defendant to testify on his or her own behalf;
2. make statements of personal belief to the jury;
3. make personal attacks on other counsel in the case;
4. appeal to the self interest of the jurors;
5. make potentially inflammatory racial, political, or religious comments;
6. state any personal opinions concerning the credibility of witnesses or that imply personal knowledge of the witnesses' credibility;
7. argue inferences from matters that are not in evidence or that have been excluded, or argue facts not in evidence;
8. allude to the appellate processes
9. make any remarks likely to invoke the jury's sympathy or to excite the jury's prejudice and passions;

³ Counsel should be mindful that should they engage in the activity described, the court may impose a sua sponte objection.

10. make any statement regarding the consequences of the jury verdict, including any “**messages to society**” by the verdict or the potential punishment for the crime; or
11. make any “golden rule” type argument; for example, the government shall not ask members of the jury to place themselves or one of their relatives in the shoes of the victim, and the defense counsel shall not ask any one of the jurors to place themselves or one of their loved ones in the shoes of the defendant.
12. play the race card where there is nothing in the record that warrants race being raised as an issue.

(8) **SENTENCING:**

Immediately upon receipt of the presentence report, counsel must review it and advise the court, opposing counsel and the probation officer that he/she intends to raise objections to the report. Counsel must then reduce the objections to writing and file the objections with the court and serve opposing counsel and the probation office with the pleading. If the objection process is going to interfere with the scheduled sentencing date, counsel shall file a motion with the court requesting a continuance.

If counsel intends to submit a written memorandum in aid of sentencing, counsel shall file it with the court and serve it on opposing counsel at least 5 days before the scheduled sentencing date. If counsel will be unable to comply with this time requirement because the presentence report was recently received, counsel must immediately file a motion seeking a continuance of the sentencing hearing.

SO ORDERED on this ____ day of _____, 200_.

Reggie B. Walton
United States District Judge

Copies to:

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